

**Notice of Allowability**

Application No.

09/936,173

Examiner

Cathy K. Worley

Applicant(s)

JIAO ET AL.

Art Unit

1638

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the papers received on Aug. 9, 2007.
2. ☒ The allowed claim(s) is/are 4,5,7,8,10,11,13-26,28,30-32 and 36-42.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance             |
|  | 9. <input type="checkbox"/> Other _____   |

### DETAILED ACTION

1. The amendment filed Aug. 9, 2007, has been entered. Claims 1-3, 6, 9, 12, 27, 29, and 33-35 have been cancelled. Claims 40-42 have been newly added are drawn to the elected invention. Claims 4, 5, 7, 8, 10, 11, 13-16, 28, 30-32, and 36-42 are pending, and are examined in the present office action.

2. The rejection of claims 4, 5, 7, 8, 10, 11, 13-26, 28, 30-32, and 36-39 under 35 USC 112, first paragraph for lack of enablement is withdrawn in light of the Applicant's arguments which were found to be persuasive. The Applicant argued that one of ordinary skill in the art has a high level of skill and knowledge (see last paragraph on page 14 of the response received on Aug. 9, 2007). The Applicant argued that there is not a high level of unpredictability in cotton transformation because of the history of cotton transformation (see last full paragraph on page 13 of the response). The Applicant also argued persuasively that plant transformation is a versatile platform (see last full paragraph on page 13 of the response). The arguments on pages 10-13 support the position that it would not require undue experimentation to practice the method of the instant invention.

3. Claims 4, 5, 7, 8, 10, 11, 13-16, 28, 30-32, and 36-42 are allowed. The claims are free of the prior art because the prior art does not teach or fairly suggest the use

of multi-effect triazole in preparing root explants from fibrous roots of cotton seedlings as a method step in a method for transforming cotton.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cathy K. Worley whose telephone number is (571) 272-8784. The examiner has a variable schedule but can normally be reached on M-F 10:00 - 4:00 with variable hours before 10:00 and after 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CKW

  
ANNE MARIE GRUNBERG  
SUPERVISORY PATENT EXAMINER